

1

2

UNITED STATES DISTRICT COURT

3

SOUTHERN DISTRICT OF NEW YORK

4

PAUL KUHNE,)

5

Plaintiff,)

6

vs.) No. 07-CV-1364

7

COHEN & SLAMOWITZ, LLP., and) (HB) (RLE)

8

MIDLAND FUNDING NCC-2 CORP.,)

9

Defendants.)

10 -----)

11

12

DEPOSITION OF DAVID A. COHEN, ESQ.

13

New York, New York

14

Monday, November 26, 2007

15

16

17

18

19

20

21

22 Reported by:

23

ANGELA BITJONIDES

24

JOB NO. 199069

25

1 Cohen

2 A. No, I don't. That was Friday and this is
3 Monday. I don't recall.

4 Q. Is there anything that would refresh your
5 recollection?

6 A. This deposition I'm sure will do that for
7 me.

8 Q. What is your position at Cohen &
9 Slamowitz, LLP.?

10 A. I'm a partner at the law firm.

11 Q. Managing partner?

12 A. No, I'm not.

13 Q. Do you have a job title?

14 A. Senior partner.

15 Q. Now, Cohen & Slamowitz is the successor
16 firm to Upton, Cohen & Slamowitz; is that correct?

17 A. Yes.

18 Q. When did Mr. Upton retire?

19 A. 1995 or 1996.

20 Q. When did his name come off the masthead?

21 A. I think it was 2003 or 2004.

22 Q. What is the location of your office?

23 A. 199 Crossways Parkway Drive in Woodbury,
24 New York.

25 Q. What is your home address?

1 Cohen

2 A. Do I have to give that?

3 Q. If I need to Subpoena you, I need the
4 address.

5 A. Then, Subpoena me in care of my attorney.
6 I give you that privilege. He will accept service.

7 MR. LEGHORN: I will accept service for
8 you.

9 Q. Are there any other offices for Cohen &
10 Slamowitz?

11 A. No.

12 Q. Now, do you know the plaintiff, Paul
13 Kuhne in any way?

14 A. No.

15 Q. Did you play any role in the collection
16 of his account?

17 A. Yes.

18 Q. What was your role?

19 A. I set up the account when it was placed
20 with us by our client.

21 Q. What do you mean "I set up the account"?

22 A. The account. I met with the client
23 initially to go over the type of placement that
24 would be given to our office. This would be
25 delinquent credit card debt. I review the nature of

1 Cohen

2 the data that we would be required to receive in
3 order to accept the claim. We identified the
4 specific fields that would be formatted to us in the
5 electronic placement of the account. I instructed
6 my IT staff how to request this information and what
7 to do with the information when it came into my
8 office.

9 I drafted the form of the letter that
10 went out to Mr. Kuhne. I reviewed the FDPCA to
11 determine what sections of it were necessary to be
12 put into the Demand Letter and Debt Valuation
13 Notice. I reviewed the form and substance of the
14 Card Members Agreement and determine the Causes of
15 Action to include in our Summons and Complaint.

16 I determined whether there was a claim
17 that should be brought in by arbitration forum or if
18 it was okay to sue him in New York Court. I
19 determined the venue to be chosen. I determined the
20 Causes of Action to be included in the Summons and
21 Complaint. I may have done some other things but I
22 don't recall specifically what they were.

23 Q. When you saw you met with the client,
24 who was the client that you met with?

25 A. I met with Midland Credit Management.

1 Cohen

2 Q. Who at Midland Credit Management did you
3 meet with?

4 A. I meet with many people. I don't recall
5 the order I've met them. Some of the people I have
6 met since have left. I've met other people who have
7 taken their place. We're doing work for this client
8 for many years.

9 Q. Many years? About how many years?

10 A. More than ten.

11 Q. Where did this meeting take place?

12 A. Some in San Diego. Some in New York
13 State and some at conferences we've had with the
14 clients around the country. Some sometime with the
15 NARCA Association -- that's National Association of
16 Retail Collection Attorneys. Typically, our clients
17 hold a conference with its attorneys as a part of
18 this NARCA convention twice a year.

19 Q. How long have you been a NARCA member?

20 A. Also at least ten years.

21 Q. Did you ever have any meetings with
22 anyone from Midland Funding NCC-2 Corp?

23 A. No.

24 Q. So all your dealings have been with
25 people who work for Midland Credit Management?

1 Cohen

2 Q. With respect to all the matters that are
3 referred to Cohen & Slamowitz, were the accounts
4 owned by Midland Funding NCC-2 Corp., or MRC
5 Receivables, does the name Midland Credit Management
6 go down on the contact people for the file?

7 A. Yes.

8 Q. Here you've got Midland Credit versus
9 Kuhne, Paul. You see where it's says that's the
10 creditor and debtor?

11 A. Yes.

12 Q. Midland Credit is listed as the creditor
13 here, right?

14 A. It is the creditor. It's the client,
15 yes.

16 Q. Taking a look here on the April 24th,
17 2006 entry --

18 A. Yes.

19 Q. -- was that when the file was opened in
20 your computer system?

21 A. I believe so.

22 Q. EDI, what does that stand for?

23 A. Electronic Data Interface.

24 Q. When an account is opened like the Kuhne
25 account here, what kind of materials are printed?

1 Cohen

2 A. Electronic information which sets forth
3 all the necessary information for us to determine
4 there was a contract; that there was a breach of the
5 contract and there were damage resulting from the
6 breach.

7 Q. Do you know what information is contained
8 in these blacked out portions there?

9 A. No, I don't.

10 Q. Did you black them out?

11 A. Somebody in my office may have or counsel
12 may have.

13 Q. Counsel meaning Mr. Leghorn?

14 A. Yes.

15 Q. Electronic data interface or interchange?

16 A. Interface.

17 Q. Is there any human involvement when stuff
18 is transferred over by electronic data interface?

19 A. Their staff puts files into certain
20 format. All the data files that we require, they
21 transfer it over. My staff interpreted the
22 electronic data and drops it into various fields and
23 reformats it in our office. Their IT staff and
24 their personnel who check their data and their
25 personnel who oversees the day-to-day function all

1 Cohen

2 handled at that end and my receptacle people handle
3 it in my office.

4 Q. Is there any telephone interaction for
5 that?

6 A. Not in the particular placement of a
7 claim.

8 Q. In the case of Mr. Kuhne, do you know
9 what kind of information would have been
10 transferred?

11 A. Again, information sufficient for us to
12 determine. We would ask for all the necessary
13 information so we could open an account up, frame a
14 cause of action. There are certain fields of
15 information we require before we go forward.

16 Q. Is there any reason to believe any kind
17 of privileged information was transferred on April
18 24, 2006 or April 25th?

19 A. If it's has been blacked out I assume we
20 feel there might be something there that is
21 privileged.

22 Q. By you or Mr. Leghorn?

23 A. Either of us.

24 Q. Did you have any conversation with
25 Mr. Leghorn to determine whether or not this matter

1 Cohen

2 should be designated privileged?

3 A. We had a brief discussion at the time we
4 printed it and sent it over to counsel to review.

5 And, I believe, counsel gave me some advice.

6 Perhaps, you would like to ask him what advice that
7 was.

8 MR. LEGHORN: You indicated we had the
9 discussion which is not privileged but
10 substance is.

11 Continue.

12 Q. I'm not asking for substance?

13 A. Okay.

14 Q. Looking at the first entry there SNCOK,
15 do you see where it says that at 12:06 on 4/25/06?

16 A. Yes.

17 Q. What does that SNCOK stand for?

18 A. I have no idea.

19 Q. What does new claim fixed?

20 A. They cleaned up data and put everything
21 into proper fields. Nothing broken they had to fix.
22 Fixed is just some term they used.

23 Q. Would that have something to do with
24 filling in entries? Replace creditor's name
25 Associates?

1 Cohen

2 A. It's the original named creditor. The
3 name would have been Associates. It's not the
4 creditor's name.

5 Q. What's a CBR? It's says "Request for a
6 CBR for the number one?

7 A. Yes, it's a code indicating we requested
8 a CBR.

9 Q. What's a CBR?

10 A. Credit Bureau Report.

11 Q. Meaning, you pulled the credit report?

12 A. Yes.

13 Q. What is the purpose of pulling the credit
14 report?

15 A. Well, several purposes. We wanted to
16 make sure our address information is accurate. Two,
17 to check the data we have been given by the client.
18 To see that the Social Security matches. The home
19 address, Social Security. To see everything. To
20 see the debtor's name is correct. To see if there
21 are any aka's reported. We also like to get a sense
22 of who our debtor is. We like to see if our
23 client -- the claim that was referred to us was
24 actually annotated on the face of the Credit
25 Bureau's Report and in this instance it was.

1 Cohen

2 Q. How do you know this?

3 A. I saw it. I reviewed it.

4 Q. Which claims are we talking about?
5 Midland Credit's claims?

6 A. I'm talking about the claim for the
7 plaintiff against this defendant, yes.

8 Q. That Midland Credit had reported
9 Mr. Kuhne is owing money?

10 A. There was an entry on the face of the
11 document indicating Midland purchased an account or
12 Midland's entity purchased an account from
13 previously owned by the Associates, Citibank and
14 reported the balance at the time of transfer and
15 also reporting current balance.

16 Q. Now, did you personally look back then or
17 now?

18 A. I don't recall which but I looked at it
19 recently again. I've looked at this Credit Bureau
20 Report.

21 Q. Is there any indication her on CNS 12
22 through 22 that you played any role in the actual
23 completion of Mr. Kuhne's account?

24 A. I don't know if my initial appearance
25 here were. If I did something affirmative on the

1 Cohen

2 account or directed someone to do something, my
3 codes would be in there. Typically, it's not
4 reflected -- the work of the attorneys -- in the
5 notes.

6 Q. Did you play in the role of the
7 collection of Mr. Kuhne?

8 A. I think I answered that. That was the
9 first question today.

10 Want to read it back?

11 Q. Yes or no.

12 A. Asked and answered. Read it back.

13 Q. That's not a proper objection. Did you
14 play any role in the collection of Mr. Kuhne's
15 account?

16 A. That was a question that you asked
17 earlier.

18 MR. LEGHORN: Answer yes or no.

19 THE WITNESS: Yes.

20 MR. LEGHORN: He went through it in
21 depth.

22 MR. BROMBERG: We talked in general about
23 Midland. I want to know what role he played?

24 Q. What was your involvement in the
25 collection of Mr. Kuhne's account, to the best of

1 Cohen

2 your recollection?

3 MR. LEGHORN: Give a quick summary.

4 A. I don't recall what I said. I would like

5 you to read it back to see if you like the answer.

6 To see if you want me to embellish.

7 Q. Let's move on. With respect to this

8 exhibit where you've got audit added query 5502,

9 what is that?

10 A. I don't know.

11 Q. Collection managers 0,89 changed to 8989?

12 A. I don't know.

13 Q. The next line where it's been blacked

14 out, do you know what kind of matter that was

15 regarding?

16 A. No.

17 Q. Have you seen the unredacted version of

18 this?

19 A. I don't recall.

20 Q. Now, review file prior to suit. Do you

21 see that at the bottom for 4/28/06?

22 A. Yes.

23 Q. What's ED2?

24 A. I don't know.

25 Q. Now, 4/28 -- following page -- first Dunn

1 Cohen

2 Notice. Do you see that?

3 A. Yes.

4 Q. That would be the first collection letter
5 that went out correct?

6 A. Yes.

7 MR. BROMBERG: I ask this be marked as
8 Plaintiff's 6.

9 (Plaintiff's Exhibit 6, Dunn Letter dated
10 4/28/06, marked for identification, as of this
11 date.)

12 Q. I show you what was marked as Plaintiff's
13 Exhibit 6 and I'm showing you a copy to your counsel
14 as well. On the bottom it's says C&S1 at the
15 bottom. Have you seen this document before?

16 A. Yes, I have.

17 Q. Is this the first Dunn Notice referred to
18 on C&S13 and Plaintiff's Exhibit 5?

19 A. It appears to be.

20 Q. The information filled in here for
21 original creditor and creditor's account number and
22 C&S file number and balance, do you see all that?

23 A. Yes.

24 Q. If you turn to the first page of
25 Plaintiff's 5 where it says C&S12 on the lower

1 Cohen

2 right?

3 A. Yes.

4 Q. All that information that appears there
5 the original creditor, creditor's account number,
6 C&S file number and balance due --

7 A. Yes.

8 Q. -- would that be information
9 electronically transmitted on 4/24/06?

10 A. It would have been a part of it.

11 Q. What other parts would there have been?

12 A. There would have been date of opening of
13 the account, date of charge off of the account,
14 Social Security number provided to us.

15 There would have been perhaps a reference
16 of the portfolio so we know which Credit Card
17 Agreement would be governing it. I'm sure there was
18 other information I'm not thinking of at the moment
19 but that's the bare minimum.

20 Q. Date of opening of the account, is there
21 something privileged of that?

22 A. No.

23 Q. Date of charge off of the account, is
24 that somehow secret?

25 A. What's your question?

1 Cohen

2 Q. Is there something secret about it? Some
3 reason why it was blacked out?

4 A. I didn't say it was blacked out.

5 Q. Where is it on Plaintiff's 5 on the first
6 page?

7 A. I don't know.

8 Q. Now, everything that appears on
9 Plaintiff's 6 come from Plaintiff's 5; correct?

10 A. I said I don't know. Plaintiff's 5?
11 Plaintiff's 6? I'm not following you. The file
12 transmitted to us in a certain format. We pull
13 certain fields of data -- electronic bits of data --
14 and use that information to re-format it and print
15 the letter. What's here are paperless. What's here
16 are excerpts of electronic bits of data. What's
17 here is not necessarily here and what's her is not
18 necessarily there.

19 MR. BROMBERG: Maybe we can save
20 ourselves a lot of time here. Is there any
21 reason why you're not turning over the first
22 page of Plaintiff's 5 with those sections
23 unredacted?

24 MR. LEGHORN: Yes because in consultation
25 with my client it was determined that -- we're

1 Cohen

2 talking about the first page only?

3 MR. BROMBERG: Yes.

4 MR. LEGHORN: First page was with respect
5 to information that was forwarded to them and
6 was information coming from them that he
7 wished to assert the attorney/client privilege
8 as to attorney/client communications as to the
9 handling of this matter.

10 That's the basic problem. I advised you
11 this morning there is nothing in that
12 information that even addresses whether Midland
13 Funding was licensed by the DCA. There is no
14 discussion. There is nothing in there as to
15 DCA's licensing at all.

16 THE WITNESS: If I may, at the time this
17 account was placed licensing was not an issue.
18 We wouldn't have cared if a client was licensed
19 or not.

20 MR. LEGHORN: There was no question.

21 Q. Were there any instructions as to the
22 handling of the account in 4/24/06 and the entries
23 for 4/24/06, 4/22/06, 4/25/06 -- first page of
24 Plaintiff's 5?

25 A. I don't know.